



ATTACHMENT A

IGNACIO "NASH" GONZALEZ, AICP INTERIM DIRECTOR  
JULIA ACKER KROG, ASSISTANT DIRECTOR  
TELEPHONE: 707-234-6650  
FAX: 707-463-5709  
FB PHONE: 707-964-5379  
FB FAX: 707-961-2427  
pbs@mendocinocounty.org  
www.mendocinocounty.org/pbs

**COUNTY OF MENDOCINO**  
**DEPARTMENT OF PLANNING AND BUILDING SERVICES**

860 NORTH BUSH STREET • UKIAH • CALIFORNIA • 95482  
120 WEST FIR STREET • FT. BRAGG • CALIFORNIA • 95437

MEMORANDUM

DATE: MAY 6, 2021

TO: PLANNING COMMISSION

FROM: PLANNING AND BUILDING SERVICES STAFF

SUBJECT: ORDINANCE ADOPTING CHAPTER 22.18 – COMMERCIAL CANNABIS ACTIVITY  
LAND USE DEVELOPMENT ORDINANCE AND AMENDING CHAPTER 10A.17 –  
MENDOCINO CANNABIS CULTIVATION ORDINANCE AND CHAPTER 20.242 –  
CANNABIS CULTIVATION SITES (OA\_2021-0002)

On April 19, 2021 the Mendocino County Board of Supervisors (Board) held a noticed public hearing on OA\_2021-0002, an ordinance adopting Chapter 22.18 – Commercial Cannabis Activity Land Use Development Ordinance and amending Chapters 10A.17 – Mendocino Cannabis Cultivation Ordinance and 20.242 – Cannabis Cultivation Sites (Ordinance). The agenda item was continued to the April 27, 2021 agenda with direction to staff to prepare options for Board consideration regarding several topics related to the draft Ordinance. On April 27, 2021, the Board provided direction to Staff on the draft Ordinance and directed that the draft Ordinance be referred back to the Planning Commission for additional review on several topics.

Staff has prepared a redline of the Draft Ordinance and Appendix A based upon Board direction, which are attached to this agenda packet. No changes were directed by the Board to Chapters 10A.17 or 20.242.

**Board of Supervisors Direction/Request for Planning Commission Input:**

(1) Draft Appendix A modifications beyond those recommended by the Planning Commission on March 19, 2021:

(a) Remove Small and Medium Indoor Cultivation allowances for the Agriculture (AG), Rangeland (RL), Upland Residential (UR) and Rural Residential (RR) districts.

Staff note: This results in limitation of Small and Medium Indoor Cultivation to solely Industrial zoned properties.

(b) Remove Medium Mixed-Light Cultivation allowances from the RL and UR districts.

Staff note: This results in limitation of Medium Mixed-Light Cultivation to solely AG and Industrial zoned properties.

(c) Remove allowance for cultivation on 10% of the parcel area for the UR district.

Staff note: This results in limitation of the \*6 footnote on Appendix A to AG and RL zoned properties, with additional language applicable to properties that would be eligible within the RL district (see section d below).

- (d) Cultivation shall only be allowed in the RL district on lands which have been previously cleared and tilled and has a prior crop history.

Specifically requested input related to cultivation on RL properties:

- (1) The Board had discussed a desire to have a prior crop history demonstrated prior to a particular date. The Board recommended that the date be prior to January 1, 2015 and that there shall be visible evidence as determined through aerial photography of the compliance. The Board is seeking Planning Commission input on the best date and method for verification of this or possibly consideration of time-frame.
- (2) The Board is seeking direction from the Planning Commission on definitions for “tilled” and “crop history”. Staff offers the following tentative definitions for consideration of the Planning Commission:

*“Tilled” means land which has been turned or stirred by plowing or harrowing or hoeing. (source: <https://www.vocabulary.com/dictionary/tilled>)*

OR

*“Tilled” means soils which have been prepared for agricultural use by mechanical agitation of various types, such as digging, stirring, and overturning. (source: <https://en.wikipedia.org/wiki/Tillage>)*

OR

*“Tilled” means land which has been worked by plowing, sowing, and raising crops. (source: <https://www.merriam-webster.com/dictionary/till>)*

Alternatively, CCR Title 14, Division 2, Chapter 8, Subchapter 1, Article 1, section 3501 defines **“Agricultural Activity”** as *the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural commodity, the raising of livestock or poultry, and any practices performed by a farmer or on a farm as incident to or in conjunction with those farming operations, including preparation of these products for market.*

*“Previous crop history” means a demonstrated history of use of an area of land for a plant or plant product that can be grown and harvested extensively for profit or subsistence. Crops may fall into six categories: food crops, for human consumption (e.g., wheat, potatoes); feed crops, for livestock consumption (e.g., oats, alfalfa); fibre crops, for cordage and textiles (e.g., cotton, hemp); oil crops, for consumption or industrial uses (e.g., cottonseed, corn); ornamental crops, for landscape gardening (e.g., dogwood, azalea); and industrial and secondary crops, for various personal and industrial uses (e.g., rubber, tobacco). (source: <https://www.britannica.com/topic/crop-agriculture>)*

OR

*“Previous Crop history” means cropping undertaken during the planting season immediately preceding the said season. (source: <https://www.lawinsider.com/dictionary/cropping-history>)*

OR

*“Cropping history.” A record of the crop that was on the land during each of the 3 years preceding the current inventory year.*

(source:

[https://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/technical/nra/nri/?cid=nrcs143\\_014127](https://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/technical/nra/nri/?cid=nrcs143_014127))

- (2) The Board recommended requiring a hydrological study for projects that rely upon a well and where water usage is equal to or greater than 1,500 gallons per day.

Staff note: This change has been incorporated in sections 22.18.050(C) and 22.18.070(D).

- (3) There was general consensus of the Board to direct staff to include language regarding discouragement of fencing unless deemed appropriate through the Planning Commission process, providing it is not deemed otherwise necessary.

Staff note: This would be addressed through a guidance document produced by the Department and in individual Land Use Permits as Conditions of Approval.

- (4) Staff clarified with the Board that there would be a limitation of one (1) Land Use Permit per legal parcel; however multiple cultivation types may be pursued on a legal parcel. For example, an individual on an AG zoned property could, in the most extreme instance, apply for one Land Use Permit (a Major Use Permit) for a Medium Outdoor permit type of up to 10% of the parcel area, a Medium Mixed-Light permit type of up to 22,000 square-feet of cultivation area, and a Specialty Indoor permit type of up to 5,000 square-feet of cultivation area.

Staff note: This clarification has been incorporated into section 22.18.030. Staff would also like to note that unlike Chapter 10A.17 a legal parcel under Chapter 22.18 is defined in section 20.008.048(A) of Mendocino County Code as *"Parcel" means a unit of land or lot which, upon application, is eligible for a Certificate of Compliance.*

- (5) The Board directed that staff amend the eligibility criteria for Phase 1 applicants under section 22.18.050 to allow those that have resolved any tree removal violations with the relevant resource agency.

Staff note: This change has been incorporated into section 22.18.050(B)(1)(a).

- (6) Staff presented supplemental findings for consideration of the Board in a memorandum dated April 27, 2021 and the Board supported inclusion of supplemental findings as follows:

Findings applicable to Land Use Permits for cultivation on RL zoned properties:

- The proposed cultivation site is located on a site that has been previously cleared and tilled and has a previous crop history.
- The proposed cultivation site will retain movement corridor(s) adequate (both in size and habitat quantity) to allow for continued wildlife use based on the species anticipated to use the corridor and maintain compatibility with adjacent uses.

Findings applicable to Land Use Permits for cultivation on AG and RL zoned properties:

- The proposed cultivation site will not result in a need for unintended expansion of infrastructure in conflict with other policies.

Staff note: Staff has deleted the language "in conflict with other policies" as that refers to conflict with other policies in the General Plan, which would already be captured by Staff in review of a Land Use Permit.

- The proposed cannabis cultivation site will not adversely affect the long-term integrity of the agricultural areas or agricultural uses in the area.

Findings applicable to Land Use Permits for all cultivation:

- There is an adequate water source to serve the cultivation site. The cultivation site is served by a legal water source located on-site and does not rely upon water delivery, except delivery of water may be utilized in emergency situations. For cultivation sites for which a hydrological study is required, an additional finding shall be made that the groundwater extraction of the proposed cultivation site will not have an adverse affect on the groundwater supply, and that there is sufficient groundwater to supply the cultivation site.

Staff note: This finding amends the previous finding language contained in section 22.18.070(D).

- The proposed cultivation site does not rely upon a generator as a power source and/or an internal combustion engine water pump.
- The proposed cultivation site will not undermine the integrity and economic viability of agricultural operations by causing or contributing to piecemeal land use conversion, land fragmentation, urban encroachment, the introduction or concentration of incompatible uses on lands adjoining or within agricultural areas, or the extension of growth-inducing urban services such as public water or sewers.

Findings applicable to Land Use Permits for Mixed-Light and Indoor cultivation:

- The proposed cultivation site will not result in grading, cutting and/or filling that would significantly and permanently alter or destroy the appearance of natural landforms.
- The proposed cultivation site will not project above an existing ridgeline; however, if no alternative site is available below the ridgeline, a finding shall be made that the cultivation site is sited and designed to reduce visual impacts.

Findings applicable to all Medium Mixed-Light cultivation sites in the AG zoning district:

- The cultivation site shall not involve the coverage of the native soil with base rock or similar medium that makes future cultivation of the site infeasible.

- (7) The Board directed that Phase 1 applicants who apply for a Land Use Permit under Chapter 22.18 phase out use of delivered water by January 1, 2023.

Staff note: This has been added to the draft ordinance in section 22.18.050(B)(3). In addition, this language may in the future be part of an amendment to Chapter 10A.17.

- (8) The Board directed that staff add a standard condition related to sites that have any water delivery to require that permit holders be required to maintain a tracking log of emergency water deliveries, including information regarding gallonage, the delivery company, the source of the water for the delivery company, and the date of delivery.

Staff note: This would be addressed through a guidance document produced by the Department and in individual Land Use Permits as Conditions of Approval.

- (9) The Board had discussed concerns related to application work flow within the Department and directed staff to include additional language in section 22.18.060 to specify that the Department may establish periods of time during which it will and will not accept applications for Land Use Permits pursuant to this Chapter as it deems appropriate to manage workload.

- (10) The Planning Commission previously recommended to the Board on March 19, 2021 that they consider requiring renewable energy sources for Medium Indoor and Medium Mixed Light Tier 1 and Tier 2 in order to reduce greenhouse gas emissions due to high energy use. The Board supports this recommendation.

Staff note: This has been added to section 22.18.050(C)(1). The Board specifically recommended listing Sonoma Clean Power and solar power as examples. Staff recommends leaving these examples out, as there may be the potential for some confusion in implementation. Sonoma Clean Power identifies itself as using less than 50% renewable energy sources, as it does not include hydroelectric power as a renewable energy source. Staff recommends to the Commission, and would like to recommend to the Board, leaving this phrase undefined to allow for more nuanced definition in the future. Staff also welcomes additional recommendations from the Commission regarding this phrasing.

### **ATTACHMENTS**

1. Proposed Resolution
  - a. Proposed Ordinance – portions in Redline
  - b. Proposed Appendix A to Chapter 22.18 - Redline
2. Memorandum to BOS April 19, 2021 (without attachments\*)
3. Memorandum to BOS April 27, 2021 (with attachment)

\*Associated attachments from the April 19, 2021 Board of Supervisors meeting can be found at:  
<https://mendocino.legistar.com/LegislationDetail.aspx?ID=4913960&GUID=32E4C264-BA15-480E-8AD3-8F36B60EFF6D&Options=&Search=>

**ORDINANCE NO. \_\_\_\_\_**

**ORDINANCE ADOPTING CHAPTER 22.18 – COMMERCIAL CANNABIS ACTIVITY LAND USE DEVELOPMENT ORDINANCE AND AMENDING CHAPTER 10A.17 – MENDOCINO CANNABIS CULTIVATION ORDINANCE AND CHAPTER 20.242 – CANNABIS CULTIVATION SITES**

The Board of Supervisors of the County of Mendocino, State of California, ordains as follows:

**Section 1:** Chapter 22.18 is hereby added to the Mendocino County Code to read as follows:

**Chapter 22.18 – Commercial Cannabis Activity Land Use Development Ordinance**

**Section 22.18.010 Purpose and Intent.**

This Chapter is known and may be cited as the Commercial Cannabis Activity Land Use Development Ordinance ("CCAO").

It is the purpose and intent of this Chapter to establish land use regulations for the commercial cultivation of cannabis, within the unincorporated areas of Mendocino County in a manner that is consistent with State law and which promotes the health, safety, and general welfare of the residents and businesses within those areas by balancing the needs of medical and recreational cannabis consumers, the needs of neighbors and communities to be protected from public safety and nuisance impacts, and the need to limit harmful environmental impacts that are sometimes associated with cannabis cultivation.

Adoption of this Chapter will protect the public health, safety and welfare of the residents of the County of Mendocino by adopting regulations identifying where in the County the various types of commercial cannabis cultivation activities can occur, and specifically what type of Land Use Permit is required, the application process and required findings.

All cultivation of cannabis within the County of Mendocino, except for cultivation allowed pursuant to Chapter 9.31, pursuant to section 10A.17.030, or those permitted or in application process under sections 10A.17.080(A)(1) or 10A.17.080(A)(2), shall comply with the provisions of the CCAO, as well as all applicable state and local laws, regardless of whether cannabis cultivation occurred on the parcel prior to the adoption of the CCAO.

Nothing in this Chapter is intended, nor shall it be construed, to:

1. Allow persons to engage in conduct that endangers others or causes a public nuisance, or
2. Allow any activity relating to the cultivation, distribution or consumption of cannabis that is otherwise illegal under California State law.

Nothing in this Chapter is intended, nor shall it be construed, to exempt commercial cannabis activities from compliance with all other applicable Mendocino County zoning and land use regulations, as well as other applicable provisions of the County Code, or compliance with any applicable state laws.

Nothing in this Chapter is intended, nor shall it be construed, to confer the right to create or maintain a public nuisance in the course of cultivating cannabis plants.

Nothing in this Chapter is intended, nor shall it be construed, to exempt commercial cannabis activities from any and all applicable local and state construction, grading, electrical, plumbing, land use, water rights, waste water discharge, streambed alteration, or any other environmental, building or land use standards or permitting requirements.

Nothing in this Chapter is intended, nor shall it be construed, to preclude a landlord or property owner from limiting or prohibiting commercial cannabis activities.

All persons operating facilities and conducting activities associated with commercial cannabis activities, as defined in this Chapter, are subject to possible federal prosecution, regardless of the protections provided by state or local law.

**Section 22.18.020 Scope**

The standards of this Chapter shall apply to all land use activities associated with commercial cannabis activities for cultivation. Cannabis cultivation activities may be permitted in compliance with the approval of the applicable Administrative Permit or Use Permit for the listed zoning districts as shown in Appendix A, provided that certain cannabis cultivation activities are exempt from a permit pursuant to section 22.18.030.

**Section 22.18.030 Permit Required**

Except as provided for by this Chapter, commercial cannabis activities related to cultivation, shall be allowed only following the issuance of a State Commercial Cultivation License and an Administrative Permit pursuant to the provisions of Section 20.192 – Administrative Permits of Title 20, Division I of the Mendocino County Code, including the renewal of said Administrative Permit, or a Use Permit pursuant to the provisions in Section 20.196 – Use Permits of Title 20, Division I of the Mendocino County Code, including the renewal of said Use Permit, in compliance with requirements for the zoning district in which the cultivation site is located and as listed in Appendix A.

If a Land Use Permit is required pursuant to this section, no building permit, water well permit (with the exception of a test well), septic permit, business license, grading permit, encroachment permit, occupancy permit, timber conversion or other entitlement for use associated with cannabis cultivation activities shall be issued prior to the issuance of the Land Use Permit.

A maximum of one Land Use Permit may be applied for and granted on a legal parcel, provided that the Land Use Permit may include one separate cultivation site for each type of Cultivation Type (Outdoor, Indoor or Mixed-Light), subject to the limitations of Appendix A.

**Section 22.18.040 Definitions**

The following definitions shall apply to this chapter, as well as those definitions stated in Chapter 20.008 of the Mendocino County Code, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Division 10, Chapter 1 (commencing with section 26000) of the California Business and Professions Code), and Title 3, Division 8, Chapter 1

(commencing with section 8000) of the California Code of Regulations, unless amended by this section.

- (A) “Department” or “Department of Planning and Building Services” or “The Mendocino County Department of Planning and Building Services” means the authorized representatives thereof, or such other department, division or representative as designated by the Board of Supervisors.
- (B) “Identification card” shall have the same definition as California Health and Safety Code Section 11362.5 et seq., and as may be amended.
- (C) “Land Use Permit” means an Administrative or Use Permit to cultivate cannabis in Mendocino County pursuant to this Chapter and Chapters 20.192 and 20.196, respectively, of the Mendocino County Code.
- (D) “Park” means an area of land used for community recreation owned or operated by a public entity or a private area of land recognized as a neighborhood park utilized by youth. State or Federal designated parks and forestlands as recognized within the Mendocino County General Plan are not included within this definition.
- (E) “Permittee” means a Person issued an Administrative Permit or Use Permit to cultivate cannabis in Mendocino County pursuant to this Chapter.
- (F) “Person with an identification card” means an individual who is a qualified patient who has applied for and obtained a valid identification card pursuant to Article 2.5 of Chapter 6 of Division 10 of the California Health and Safety Code (Section 11362.7 et seq.).
- (G) “Private residence” means a house, an apartment unit, a mobile home, or other similar dwelling, for purposes of this Chapter.
- (H) “Qualified patient” or “Patient” means a person who is entitled to the protections of Section 11362.5 of the Health and Safety Code, but who does not have an identification card issued pursuant to Article 2.5 of Chapter 6 of Division 10 of the Health and Safety Code (Section 11362.7 et seq.).
- (I) “School” means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code, or any licensed day care or preschool facility. The definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a vocational or professional institution of higher education, including a community or junior college, college or university.
- (J) “Youth center” has the same meaning as in Section 11353.1 of the Health and Safety Code.

**Section 22.18.050 Cultivation Types and Exceptions**

(A) Cultivation Types for which Land Use Permits may be applied for shall be the same as those provided in section 8201 of the California Code of Regulations, subject to the limitations in Appendix A of this Chapter in regards to the zoning district in which the cultivation site is located. Appendix A is attached to the Ordinance adopting this Chapter and shall be codified and made a part of this Chapter 22.18.

(B) Notwithstanding the limitations of Appendix A of this Chapter, Phase 1 applicants who applied for a Phase 1 permit under Chapter 10A.17 may apply for a Land Use Permit pursuant to this Chapter, subject to the following criteria:

(A1) Eligibility. The parcel upon which the Land Use Permit is requested shall not be located in a Commercial Cannabis Prohibition (CP) Combining District or sunset area (as described in Mendocino County Code section 10A.17.080(B)(2)(b)). In addition, the Phase 1 permit application shall not have been denied for one of the following reasons:

(4a) Tree removal violation; provided, however, that this shall not apply to Phase 1 applicants who have resolved the violation with the relevant resource agency.

(2b) Failure to pass the required background check.

(3c) Lack of proof of prior cultivation.

(4d) Legal parcel established after January 1, 2016.

(5e) Non-responsiveness to requests for information from the County.

(B2) Land Use Permit Required.

(4a) Cultivation of 10,000 square feet or less shall be subject to issuance of an Administrative Permit and need not comply with the zoning district or parcel size criteria in Appendix A of this Chapter.

(2b) Cultivation in excess of 10,000 square feet is subject to the provisions of Appendix A of this Chapter including zoning district and parcel size.

(3) Water Delivery. Phase 1 applicants who applied for a Phase 1 permit under Chapter 10A.17 and who apply for a Land Use Permit pursuant to this Chapter and whose primary source of water is delivered to the cultivation site shall cease using delivered water by January 1, 2023, unless specifically authorized by this Chapter or the Land Use Permit.

(C) Additional Requirements for Certain Cultivation Types and Sites.

(1) Medium Indoor and Medium Mixed-Light cultivation types shall be required to use renewable energy sources.

- (2) All cultivation sites intending to use a water well as a water source and projecting to use 1,500 gallons or more per day shall be required to provide a hydrological study performed according to approved methods and procedures as published by the Mendocino County Division of Environmental Health's "Land Division Development Guidelines," as they may be revised from time to time. Hydrological studies shall certify the following, as well as any other findings which may be specified by the Mendocino County Division of Environmental Health:
- (a) Whether or not there is an adequate water supply during the dry summer months for the proposed cultivation site.
  - (b) Whether or not there is an adequate water supply during drought conditions.
  - (c) Whether or not the water use for the proposed cultivation site will deplete the water supply for hydrologically contiguous wells.
  - (d) An opinion about the cumulative impacts of the proposed water extraction on the aquifer.
- (3) All cultivation sites in the Rangeland zoning district shall be located on a site that has been previously cleared and tilled and has a prior crop history.

#### **Section 22.18.060 Application Process**

- (A) Each application for a Land Use Permit, shall be completed on form(s) and in the manner prescribed by the County of Mendocino for a commercial cultivation site(s) consistent with Chapter 20.192 (Administrative Permits) and Chapter 20.196 (Use Permits) of the Mendocino County Code. In addition to the standard information required pursuant to Chapter 20.196 (Use Permits) and Chapter 20.192 (Administrative Permits), the application shall also contain copies of all documentation submitted to the State as part of its application process for obtaining a State Commercial Cultivation License.

The Department may establish periods of time during which it will and will not accept applications for Land Use Permits pursuant to this Chapter as it deems appropriate to manage workload. The Department may prepare a guidance document regarding additional documentation that may be required to accompany an application, such as a Biological Scoping Survey or Transportation Analysis.

Notwithstanding the provisions of Chapter 20.192 (Administrative Permits) and Chapter 20.196 (Use Permits), the following modified procedures for Administrative Permits and Use Permits shall apply to all Land Use Permits for commercial cannabis activities:

- (1) The time period specified under section 20.192.025(B) of Mendocino County Code shall be the same as the time period specified under section 20.196.025(B).

- (2) A public hearing by the Zoning Administrator shall be required and the notice procedures in section 20.196.025(C) shall be adhered to for all Administrative Permits for commercial cannabis cultivation activities.
  - (3) If the property upon which a Land Use Permit is applied for abuts a private road, notification of the required public hearing shall be provided to all property owners abutting said private road. The content of the notice shall be the same as required by section 20.196.025(C)(9). Failure of any person or entity to receive the notice required by this paragraph shall not constitute grounds to invalidate any action taken regarding the application.
- (B) Phase 1 applicants who meet the eligibility criteria set forth in section 22.18.050(A) shall be provided a 60 day early application window prior to the Department accepting any other applications for a Land Use Permit for commercial cannabis activities related to cultivation.

**Section 22.18.070 Required Findings**

Land Use Permits, whether Administrative Permits or Use Permits, shall only be issued after making the findings required by Section 20.196.020, as well as the following findings:

- (A) The proposed cannabis cultivation site is in compliance with the provisions of this Chapter.
- (B) The location and operation of the cannabis cultivation site will, to the maximum extent feasible, avoid or minimize its impact on environmentally sensitive areas including hillsides exceeding fifteen (15) percent, oak woodland, and timber resources.
- (C) The proposed cannabis cultivation site will avoid or minimize odor and light impact on residential uses.
- (D) There is an adequate water source to serve the cultivation site. The cultivation site is served by a legal water source located on-site and does not rely upon water delivery, except delivery of water may be utilized in emergency situations. For cultivation sites for which a hydrological study is required, an additional finding shall be made that the groundwater extraction of the proposed cultivation site will not have an adverse affect on the groundwater supply, and that there is sufficient groundwater to supply the cultivation site.
- (E) The proposed cultivation site does not rely upon a generator as a power source and/or an internal combustion engine water pump.
- (F) The proposed cultivation site will not undermine the integrity and economic viability of agricultural operations by causing or contributing to piecemeal land use conversion, land fragmentation, urban encroachment, the introduction or concentration of incompatible uses on lands adjoining or within agricultural areas,

or the extension of growth-inducing urban services such as public water or sewers.

(G) For cultivation sites with unresolved violations related to or in support of the cannabis activities on the parcel that are verified as unresolved by the Department as the result of an active complaint or investigation, findings shall be made that the proposed project or use will not contribute to repeat violations related to cannabis activities on the parcel and the cannabis activities on the parcel are in compliance with all laws, rules, and regulations pertaining to land uses, building and construction, health and safety, and any other applicable provisions of this Chapter, and such violation processing fees have been paid.

(H) For all cultivation sites in the Rangeland zoning district:

(1) The proposed cultivation site is located on a site that has been previously cleared and tilled and has a previous crop history.

(2) The proposed cultivation site will retain movement corridor(s) adequate (both in size and habitat quantity) to allow for continued wildlife use based on the species anticipated to use the corridor and maintain compatibility with adjacent uses.

(I) For all cultivation sites in either the Rangeland or Agricultural zoning districts:

(1) The proposed cultivation site will not result in a need for unintended expansion of infrastructure.

(2) The proposed cultivation site will not adversely affect the long-term integrity of the agricultural areas or agricultural uses in the area.

(J) For all Mixed-Light and Indoor cultivation sites:

(1) The proposed cultivation site will not result in grading, cutting and/or filling that would significantly and permanently alter or destroy the appearance of natural landforms.

(2) The proposed cultivation site will not project above an existing ridgeline; however, if no alternative site is available below the ridgeline, a finding shall be made that the cultivation site is sited and designed to reduce visual impacts.

(K) For all Medium Mixed-Light cultivation sites in the Agricultural zoning district: the cultivation site shall not involve the coverage of the native soil with base rock or similar medium that makes future cultivation of the site infeasible.

#### **Section 22.18.080 Revocation of Permit**

Any of the following may be grounds for suspension or revocation of a Land Use Permit issued pursuant to this chapter, following the procedures in Sections 20.192.060, 20.192.065, 20.196.055 or 20.196.060 of Mendocino County Code, as applicable, or if

there is an immediate threat to the public health or safety, by such other procedures as may be authorized by law.

- (A) Failure to comply with one or more of the terms and conditions of the Land Use Permit, the Mendocino County Code, the Mendocino County General Plan or state law or regulation.
- (B) The Land Use Permit was granted on the basis of false material information, written or oral, given willfully or negligently by the applicant.
- (C) Denial, revocation or suspension of the permittee's state cannabis license.
- (D) Failure to pay state and county taxes or fees.
- (E) Conduct related to commercial cannabis activities related to cultivation in a manner that constitutes a public nuisance, where the permittee has failed to comply with reasonable conditions to abate the public nuisance as directed by the County of Mendocino.

**Section 22.18.090 Enforcement and Declaration of Public Nuisance**

- (A) All of the remedies provided for in this Chapter, or elsewhere in the law, shall be cumulative and not exclusive for violations of this Chapter.
- (B) Violations of this Chapter include, but are not limited to failure to obtain and maintain in good standing any Land Use Permit or license required by this Chapter, compliance with any required element or condition on which a Land Use Permit was issued pursuant to this Chapter, or any violation of the provisions of this Chapter where a Land Use Permit is not required.
- (C) Cultivation of cannabis in the absence of a required County permit, or authorization, and a required State License, is a public nuisance and may be abated by the County as a public nuisance in accordance with the provisions of either County Code Chapter 8.75 or 8.76.
- (D) The County may enforce this Chapter by using any applicable state or county law, including, but not limited to Mendocino County Code Chapters 1.08, 8.75 or 8.76, and may use either the administrative process to achieve code compliance or available civil remedies, such as injunctive relief.

**Section 2:** Section 10A.17.010 of the Mendocino County Code is hereby amended to read as follows:

**Sec. 10A.17.010 - Title, Purpose and Intent.**

This Chapter is known and may be cited as the Mendocino Cannabis Cultivation Ordinance ("MCCO"). Chapter 20.242 of the Mendocino County Code, titled Cannabis Cultivation Sites, is complementary to this Chapter and together the chapters may be cited as the Mendocino Cannabis Cultivation Regulation ("MCCR").

Adoption of this Chapter will protect the public health, safety and welfare of the residents of the County of Mendocino by adopting regulations regarding the cultivation of cannabis by individuals consistent with the provisions of State law and a local permitting structure that will operate in conformance with State licensing requirements.

This Chapter, and the complementary regulations of Chapter 20.242 of the Mendocino County Code, shall apply only to those Persons who obtained or are in the application process for a permit pursuant to the MCCR during Phase One and Two as defined in section 10A.17.080, as well as Persons cultivating pursuant to the exemptions provided for in section 10A.17.030.

Nothing in this Chapter is intended, nor shall it be construed, to:

- 1) Allow persons to engage in conduct that endangers others or causes a public nuisance, or
- 2) Allow any activity relating to the cultivation, distribution or consumption of cannabis that is otherwise illegal under California State law.

Nothing in this Chapter is intended, nor shall it be construed, to exempt the cultivation of cannabis from compliance with all other applicable Mendocino County zoning and land use regulations, as well as other applicable provisions of the County Code, or compliance with any applicable state laws.

Nothing in this Chapter is intended, nor shall it be construed, to confer the right to create or maintain a public nuisance in the course of cultivating cannabis plants.

Nothing in this Chapter is intended, nor shall it be construed, to exempt the cultivation of cannabis, as defined herein, from any and all applicable local and state construction, grading, electrical, plumbing, land use, water rights, waste water discharge, streambed alteration, or any other environmental, building or land use standards or permitting requirements.

Nothing in this Chapter is intended, nor shall it be construed, to preclude a landlord or property owner from limiting or prohibiting the cultivation of cannabis.

All persons operating facilities and conducting activities associated with the cultivation of cannabis, as defined in this Chapter, are subject to possible federal prosecution, regardless of the protections provided by state or local law.

**Section 3:** Section 10A.17.030 of the Mendocino County Code is hereby amended to read as follows:

**Sec. 10A.17.030 - Cultivation Permit Required; Exemptions.**

- (A) Except as provided for by this Section, cultivation of cannabis pursuant to this Chapter shall be allowed only following the issuance of a Permit pursuant to the provisions of this Chapter, and the review of a permit pursuant to the provisions of Chapter 20.242 of the Mendocino County Zoning Code. Chapter 20.242 authorizes the cultivation of cannabis only in specifically enumerated zoning

ATTACHMENT A

districts, as determined by permit type, subject either to a zoning clearance, administrative permit or minor use permit.

- (B) Qualified patients, persons with an identification card or primary caregivers cultivating cannabis are exempt from the permit requirements of paragraph (A) of this Section, subject to the following requirements:
- (1) Intentionally Omitted.
  - (2) Compliance with the provisions of Section 10A.17.040.
  - (3) Any and all cannabis cultivated by a qualified patient or person with an identification card shall be for the sole and exclusive use by the patient only; such cannabis may not be provided, donated, sold or distributed to any other person. A maximum of one hundred (100) square feet of medical cannabis may be cultivated on a legal parcel by a qualified patient or patients.
  - (4) Any and all cannabis cultivated by a primary caregiver shall be for the sole and exclusive use of up to a maximum of two (2) patients which have provided written designation to the primary caregiver to provide those services; the primary caregiver may not receive remuneration for these activities except for compensation in full compliance with subdivision (c) of Health and Safety Code section 11362.765. A maximum of one hundred (100) square feet of cultivation area of medical cannabis may be cultivated by a primary caregiver for each patient they are cultivating for. A maximum total of two hundred (200) square feet may be cultivated on a legal parcel by a primary caregiver or caregivers. Primary caregivers cultivating more than one hundred (100) square feet shall be required to register with the Agriculture Department on an annual basis.
  - (5) Persons eligible to cultivate cannabis under this paragraph (B) may also cultivate cannabis for adult use, but any such cannabis plants must be contained within the square footage allowed in this paragraph (B).
- (C) Individuals desiring to cultivate cannabis for adult use are exempt from the permit requirements of paragraph (A) of this section, subject to compliance with the following requirements:
- (1) Compliance with the provisions of Section 10A.17.040.
  - (2) Cultivation of cannabis must occur in or on the grounds of a private residence or accessory structure, may be within one (1) or more cultivation sites, and contain no more than six (6) cannabis plants with a total plant canopy not to exceed one hundred (100) square feet.
  - (3) Cultivation of adult use cannabis under this paragraph (C) on legal parcels where medical cannabis plants are being cultivated pursuant to Chapter 9.31 shall not be used to increase the total number of cannabis plants that may be cultivated on the legal parcel, but up to six (6) of the

total allowed number of twenty-five (25) plants may be set aside as personal cultivation of adult use cannabis.

- (4) Cultivation of adult use cannabis under this paragraph (C) on legal parcels where cannabis plants are being cultivated under a Permit issued pursuant to this Chapter 10A.17 is allowed, provided that the person or persons cultivating the adult use cannabis reside on the legal parcel, the adult use cannabis plants do not exceed one hundred (100) square feet of total plant canopy, and the adult use cannabis plants shall be identified on the site plan required pursuant to section 10A.17.090.
- (5) Cultivation of adult use cannabis under this paragraph (C) on any legal parcel less than ten (10) acres in size shall only be allowed indoors.

**Section 4:** Section 10A.17.040 of the Mendocino County Code is hereby amended to read as follows:

**Sec. 10A.17.040 - General Limitations on Cultivation of Cannabis.**

The following limitations shall apply to all cultivation of cannabis pursuant to this Chapter. Cultivation of cannabis shall also be subject to all applicable restrictions of Mendocino County Code Chapter 20.242.

- (A) The cultivation of cannabis in Mendocino County, in any amount or quantity by any entity, shall not be allowed in the following areas:
  - (1) Within one thousand (1,000) feet of a youth-oriented facility, a school, or a park as defined herein that is in existence at the time a Permit is initially applied for.
  - (2) Outdoors or using mixed light within one hundred (100) feet of any occupied legal residential structure located on a separate legal parcel; provided, however, that on January 1, 2020, this setback shall be increased to two hundred (200) feet for all Permit applications but shall not apply to renewals of Permits originally issued before that date.
  - (3) Outdoors or using mixed light in a mobile home park as defined in Health and Safety Code Section 18214.1 within one hundred (100) feet of an occupied mobile home that is under separate ownership.
  - (4) Intentionally omitted.
  - (5) Outdoors or using mixed light within fifty (50) feet from any adjoining legal parcel under separate ownership or access easement (whichever is most restrictive); provided, however, that on January 1, 2020, this setback shall be increased to one hundred (100) feet for all Permit applications but shall not apply to renewals of Permits originally issued before that date.

ATTACHMENT A

- (6) Any indoor cultivation sites that comply with paragraph (A)(1) shall also be subject to the following:
- (a) Indoor cultivation sites shall comply with the building property line setback established by the zoning district in which the cultivation site is located.
  - (b) The cultivation of cannabis within an accessory structure shall be allowed subject to the development requirements of the zoning district in which it is located and to requirements of Chapter 20.164 — Accessory Use Regulations except, notwithstanding Section 20.164.010: (a) the cultivation of cannabis in an accessory structure is not permitted prior to the construction of the legal dwelling unit on the parcel, if a legal dwelling unit is required by this Chapter, and (b) cultivation of cannabis shall only be allowed on the same parcel as the dwelling unit, if required.
  - (c) Indoor cultivation sites for individuals desiring to cultivate cannabis for adult use pursuant to section 10A.17.030(C) shall also be subject to the following limitation: cultivation sites located within a private residence that is a rental unit, as that term is defined by County Code section 20.008.050, shall not be located in any indoor space other than a garage or accessory structure.
- (B) The distance between the listed uses in the above paragraph (A)(1) and cannabis that is being cultivated shall be measured in a straight line from the nearest point of the fence required in section 10A.17.040(H), or if the cannabis is cultivated indoors, from the nearest exterior wall of the building in which the cannabis is cultivated to the nearest point of the exterior wall of the facility, building, or structure, or portion of the facility, building, or structure in which the above-listed use occurs or to the nearest point of any fenced, maintained or improved area where the users of the facility are typically present during normal hours of operation, whichever is closest. The distance in paragraphs (A)(2) and (A)(3) to any residential structure shall be measured from the fence required in section 10A.17.040(H) to the nearest exterior wall of the residential structure. The distance in paragraph (A)(5) shall be measured from the fence required in section 10A.17.040(H) to the boundary line of a legal parcel or access easement.
- Applicants may seek a reduction in the setback described in paragraphs (A)(1) and (A)(5) upon issuance of an administrative permit pursuant to Chapter 20.242. See also sections 20.242.060(D) and 20.118.040 (D), (E) and (F) for further exceptions to setback regulations.
- (C) The outdoor, indoor or mixed light cultivation of cannabis shall not propagate objectionable odors which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or that

ATTACHMENT A

endanger the comfort, repose, health, or safety of any of those persons or the public.

- (D) The indoor or mixed-light cultivation of cannabis shall rely on the electrical grid or some form of alternative energy source. The indoor or mixed-light cultivation cannabis shall not rely on a generator as a primary source of power.
- (E) All lights used for the indoor or mixed light cultivation of cannabis shall be fully contained within structures or otherwise shielded to fully contain any light or glare involved in the cultivation process. Security lighting shall be motion activated and all outdoor lighting shall be shielded and downcast or otherwise positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the legal parcel upon which they are placed.
- (F) All activities associated with the cultivation of cannabis shall not exceed the noise level standards as set forth in the County General Plan Policies DE100, 101 and 103.
- (G) All cultivation of cannabis shall not utilize water that has been or is illegally diverted from any spring, wetland, stream, creek, or river. The activities associated with the cultivation of cannabis shall not create erosion or result in contaminated runoff into any stream, creek, river or body of water.
- (H) All cannabis grown in Mendocino County (excluding indoor growing) must be within a secure fence of at least six (6) feet in height that fully encloses the garden area. The fence must include a lockable gate that is locked at all times when a qualified patient, caregiver or permittee (or their agent) is not in the immediate area. Said fence shall not violate any other ordinance, code section or provision of law regarding height and location restrictions and shall not be constructed or covered with plastic or cloth except shade cloth may be used on the inside of the fence.
- (I) All buildings where cannabis is cultivated or stored shall be properly secured to prevent unauthorized entry.
- (J) Persons cultivating cannabis pursuant to either section 10A.17.030, paragraphs (B) or (C) shall also comply with the provisions of section 10A.17.110, paragraphs (N) and (O).
- (K) Prohibition on Tree Removal. Removal of any commercial tree species as defined by Title 14 California Code of Regulations section 895.1, Commercial Species for the Coast Forest District and Northern Forest District, and the removal of any true oak species (*Quercus* sp.) or Tan Oak (*Notholithocarpus* sp.) for the purpose of developing a cannabis cultivation site is prohibited. This prohibition shall not include the pruning of any such trees for maintenance, or the removal of such trees if necessary to address safety or disease concerns.

**Section 5:** Section 10A.17.080 of the Mendocino County Code is hereby amended to read as follows:

**Sec. 10A.17.080 - Permit Phases and Requirements Specific to each Phase.**

Unless specifically exempted, in addition to compliance with all other requirements of this Chapter, all Permits shall comply with the following requirements:

- (A) Permits under the MCCO will be issued in the following phases:
  - (1) Phase One: Following the effective date of the MCCO, Permits will only be issued to applicants who provide to the Agricultural Commissioner pursuant to paragraph (B)(1) of this section proof of cultivation at a cultivation site prior to January 1, 2016 ("proof of prior cultivation"), and who comply with all other applicable conditions of this Chapter and Chapter 20.242. Applications for Permits during Phase One shall only be accepted until December 31, 2018, and from Monday, April 1, 2019, until Friday, October 4, 2019. Applicants able to provide proof of prior cultivation may apply for a Permit on a relocation site pursuant to paragraph (B)(3) of this section.
  - (2) Phase Two: Starting January 1, 2018, the Agricultural Commissioner will begin accepting applications for Type C-A, 1A and Type 2A Permits for indoor cultivation, and Type C-B, 1B and 2B Permits for mixed-light cultivation, which mixed-light cultivation must occur in a greenhouse equipped with filtered ventilation systems as described in paragraph (M) of section 10A.17.110 and may not occur in a hoop house, in the following zoning districts, subject to compliance with all other applicable conditions of this Chapter and Chapter 20.242: Limited Industrial (I-1), General Industrial (I-2), and Pinoleville Industrial (P-I). Proof of cultivation prior to January 1, 2016, is not required. Applications for Phase Two shall not be accepted after the effective date of the ordinance establishing Chapter 22.18.
- (B) Requirements specific to Phase One Permits.
  - (1) Proof of Prior Cultivation. Persons applying for a Permit during Phase One shall be required to provide to the Agricultural Commissioner evidence that they were cultivating cannabis on the cultivation site prior to January 1, 2016, which cultivation site shall have been, or could have been, in compliance with the setback requirements of paragraph (A) of section 10A.17.040. Evidence shall include:
    - (a) Photographs of any cultivation activities that existed on the legal parcel prior to January 1, 2016, including: (i) ground level views of the cultivation activities and (ii) aerial views from Google Earth, Bing Maps, Terraserver, or a

ATTACHMENT A

comparable service showing: both the entire legal parcel and the cultivation site in more detail. The date these images were captured shall be noted.

- (b) Photographs of any cultivation activities that currently exist on the legal parcel, including: (i) ground level views of the cultivation activities and (ii) aerial views from Google Earth, Bing Maps, Terraserver, or a comparable service showing: both the entire legal parcel and the cultivation site in more detail. The date these images were captured shall be noted.
  - (c) At least one (1) additional document demonstrating cultivation on the legal parcel prior to January 1, 2016, which evidence may be used to substitute for evidence pursuant to clause (a). The Agricultural Commissioner shall prepare a list of the types of documentation that will be accepted to meet this requirement, and may accept other similarly reliable documentary evidence showing that cannabis was cultivated prior to January 1, 2016.
  - (d) Proof of prior cultivation shall be assigned to the applicant relative to their prior cultivation site.
  - (e) Persons who participated in a permit program pursuant to the County's Chapter 9.31 in previous years may present evidence of such participation and payment of all required fees in order to provide proof of prior cultivation.
- (2) Zoning Districts; Exceptions. Existing cultivation sites not located in zoning districts where Chapter 20.242 specifically allows cultivation may be issued a Type C, Type C-A, or Type C-B Permit, subject to the following requirements, in addition to all other applicable requirements of this Chapter:
- (a) The zoning district is one where a dwelling unit is a principally permitted use and a dwelling unit is present.
  - (b) Sunset Provision for Residential Districts. Cultivation sites on legal parcels located in the Single-Family Residential (R-1), Two-Family Residential (R-2), Multiple-Family Residential (R-3), Suburban Residential (S-R), Rural Community (R-C), and Rural Residential (lot sizes one (1) acre, two (2) acres and five (5) acres [legal non-conforming parcels to minimum zoning size][R-R:L-1, R-R:L-2, and R-R:L-5 {legal non-conforming to minimum zoning size}]), as well as cultivation sites in any other zoning district where a dwelling unit is a principally permitted use and the legal parcel is less than two (2) acres in size, are subject to the following requirements:

ATTACHMENT A

- (i) There is an occupied dwelling unit on the legal parcel with the cultivation site.
- (ii) A Permit may be renewed and valid only until three (3) years following the effective date of the ordinance adopting this Chapter and any permits issued shall be void not later than three (3) years following said effective date; provided, however, that indoor cultivation sites (Types C-A, 1A or 2A) within two (2) miles of the Coastal Zone Boundary which, as of May 14, 2019, have been issued a Permit (and issued any permit pursuant to Chapter 20.242) or have applied for a Permit and are under Permit review (and applied for and are under review for any permit pursuant to Chapter 20.242), may be issued and/or renew a Permit until June 30, 2022, subject to the modification of the existing administrative or use permit for the indoor cultivation site.

The provisions of this subsection, however, shall not apply in areas designated as "CA" Cannabis Accommodation Combining District, nor shall they apply to parcels zoned Rural Residential (lot size five (5) acres [R-R:L-5]) that are between 3.5 and 4.99 acres and have been issued an administrative permit pursuant to section 20.242.070(C).

- (c) Cultivation sites on legal parcels located in the Rural Residential zoning district, lot size five (5) acres (conforming parcels of five acres or more only)(R-R:L-5), are subject to the following additional requirement that there is an occupied dwelling unit on the legal parcel with the cultivation site.
  - (d) If a Permit is granted pursuant to this paragraph (B)(2) in these zoning districts, any future revocation or lapse in renewal of such Permit shall extinguish the ability of any person to obtain a Permit for such cultivation site.
- (3) Relocation. Persons able to show proof of prior cultivation pursuant to paragraph (B)(1) above may apply for a Permit not on the site previously cultivated (the "origin site") but on a different legal parcel (the "destination site"), subject to the following requirements:
- (a) Persons may apply to relocate their cultivation site pursuant to this paragraph (B)(3) until three (3) years after the effective date of the ordinance adopting this Chapter, or until May 4, 2020.

ATTACHMENT A

- (b) The location and operation of the proposed cultivation site on the destination parcel complies with all requirements and development standards that apply to a new cultivation site as of January 1, 2020, pursuant to this Chapter and Chapter 20.242; provided, however:
  - (i) An existing cultivation site shall not be transferred to a legal parcel located within the Forestland or Timber Production Zone zoning districts.
  - (ii) An origin site may relocate to a destination site in the Rangeland zoning district, so long as the destination site has an existing cultivation site and no new cultivation sites would be established.
- (c) The origin site shall be restored. The application for a Permit on a destination site shall be accompanied by a restoration plan that is consistent with the standard conditions and best management practices listed in the North Coast Regional Water Quality Control Board Order No. 2015-0023, and which shall include the following:
  - (i) Remove or repurpose buildings, greenhouses, fences, irrigation equipment, water intakes, pumps, storage tanks and other materials brought to the origin site for the purpose of cannabis cultivation;
  - (ii) Remove illegal dams, ponds or other in-stream water storage to restore natural stream flows, unless such features will continue in use;
  - (iii) Remove or compost agricultural wastes;
  - (iv) Remove trash and other debris; and
  - (v) Revegetate cleared areas with native plants typical of nearby natural areas, including groundcover, shrubs and trees.
- (d) Unless the destination site is within the Agricultural zoning district, the application shall include either a water availability analysis pursuant to paragraph (C)(1)(b) below or a will serve letter pursuant to paragraph (C)(1)(c) below.
- (e) Prior to the issuance of the Permit to cultivate cannabis at the destination parcel, the applicant shall provide the Agricultural Commissioner with an agreement, on a form approved by the Agricultural Commissioner and County Counsel, providing that the applicant releases any right to

continue or resume cultivation of cannabis on the origin parcel.

- (f) If a person is granted a Permit for a destination site, any claims of proof of prior cultivation on the origin site shall be effectively transferred to the destination site, and the ability to claim proof of prior cultivation at the origin site shall be extinguished.
- (g) There shall be a two (2) acre minimum parcel size for all Type C, Type C-A or Type C-B Permits.
- (4) Multiple Permits may be applied for and granted on a single legal parcel that is owned by multiple persons. Each owner may individually apply for a Permit to cultivate cannabis, provided that each owner must provide proof of prior cultivation pursuant to paragraph (B)(1) above. Each owner shall be limited to a Type C, Type C-A or Type C-B Permit, unless that owner was previously enrolled in a permit program pursuant to the County's Chapter 9.31, or unless the cumulative total square footage of plant canopy applied for by all owners does not exceed the maximum square footage permitted on a parcel for the relevant zoning district.
- (5) Persons eligible to apply for a Permit during Phase One may apply for a different and/or larger Permit type in subsequent years, subject to all requirements of this Chapter.
- (6) If a Permit is granted pursuant to this paragraph (B), any future revocation or lapse in renewal of such Permit shall extinguish the ability of any person to obtain a Permit for such cultivation site, unless otherwise allowed by this Chapter 10A.17; provided, however, that not more than once in a five-year period, a Permittee may file with the Department of Agriculture, on a form prescribed by the Department, a Notice of Non-Cultivation instead of an application to renew the Permit, and the Permittee's ability to obtain a Permit for such cultivation site will not be extinguished.

**Section 6:** Section 10A.17.100 of the Mendocino County Code is hereby amended to read as follows:

**Sec. 10A.17.100 - Permit Review and Issuance.**

- (A) The Agricultural Commissioner's Office shall issue a Permit pursuant to this Chapter only:
  - (1) Following the referral to and clearance or permit approval pursuant to Chapter 20.242; and

ATTACHMENT A

- (2) Following review by qualified County staff to review proposed permit locations and identify where habitat suitable for sensitive species may exist. The County shall consult with the California Department of Fish and Wildlife ("CDFW") to evaluate if there is a possibility for presence or habitat suitable for sensitive species on the parcel with a proposed Permit location. Upon consultation, CDFW may recommend approval of the proposed development, ask to conduct a site inspection or request additional studies in order to make the determination that no impacts to sensitive species will occur. A cultivator that cannot demonstrate that there will be a less than significant impact to sensitive species will not be issued a Permit. The County shall develop a policy in consultation with CDFW to define an objective set of criteria that applications can be checked against and when during Phases 1 and 2 a formal referral to CDFW is required to avoid impacts to sensitive species and natural communities. Following the development of the policy referred to in the previous sentence, consultation with CDFW shall not be required but be performed pursuant to the policy; and
  - (3) After the Agricultural Commissioner's Office, and other County and State agency staff, as appropriate, have reviewed the application and performed a pre-permit site inspection to confirm adherence to the requirements established in the MCCO; and
  - (4) Following receipt of evidence of payment of the required permit fee, pursuant to Section 10A.17.070.
- (B) As a condition of approval for any cultivation permit, the owner or permittee shall indemnify and hold harmless the County of Mendocino and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by affected property owners or other third parties due to the commercial cultivation of cannabis and for any claims brought by any person for problems, injuries, damages, or liabilities of any kind that may arise out of the commercial cultivation of cannabis.
- (C) Discovery of any violation(s) of the Mendocino County Code during the Permit application process will be treated in a similar manner to violation(s) that are self-reported during an active amnesty program. That is, the discovered violation(s) will still need to be corrected, but any investigative and/or penalty fees associated with an after-the-fact County permit will be waived.
- (1) If the discovered violation(s) are directly related to a Phase One Permit application, and/or if it is discovered that the Permit would authorize a particular use for which a separate County permit is required but has not yet been obtained, the applicant shall be required to agree in writing to a compliance plan prior to issuance of the Permit. Failure by applicant to agree in writing to a required compliance plan shall be grounds for denial of the Permit.
    - (a) The compliance plan will identify the violation(s) and may suggest corresponding remedial action(s) that may be taken to correct the violation(s), will identify the required permit(s) based on the uses

ATTACHMENT A

identified in the Permit application, and will include timelines for achieving code compliance for all violations and/or for submitting completed applications for each required permit.

- (b) In no event will more time be given to correct all violations, and/or submit a complete application for each required permit, than one (1) year after the date of issuance of the Permit.
- (c) After the applicant has signed the compliance plan, as presented by the Agricultural Department in coordination with the appropriate County department(s), the Agricultural Department may issue a Permit restricted as indicated in the compliance plan, so long as no other barrier(s) to such issuance exists. Failure to abide by the compliance plan shall be grounds for Permit termination, or non-renewal, pursuant to section 10A.17.140.
- (d) The compliance plan will be the primary mechanism to obtain code compliance from Permit applicants with respect to violations directly related to Phase One Permits applications. However, nothing in this section is intended to limit the use of any other applicable code enforcement provision or the ability of any County department with the appropriate authority from enforcing the Mendocino County Code.

- (2) If the discovered violation(s) are not directly related to a Phase One Permit application, such violation(s) will not affect the processing of the Phase One Permit application. However, any County department with appropriate enforcement authority with respect to such violation(s) may make use of any applicable code enforcement mechanism as if the violation(s) were discovered as a result of self-reporting during an active amnesty program.

(D) Permit Application Denial.

- (1) The Agricultural Commissioner's Office may, at any time during the application process, deny an application based on the failure to meet the requirements of this Chapter 10A.17, including, but not limited to, the following:
  - (a) Incomplete application.
  - (b) Failure to provide additional information or documentation within the timeframe prescribed by the Agricultural Commissioner's Office.
  - (c) Cultivation of cannabis on a legal parcel (beyond what is exempt from a permit requirement pursuant to County Code section 10A.17.030) during an application stay pursuant to County Code section 10A.17.090.
  - (d) Cultivation of cannabis in illegal and/or non-compliant structures.

- (e) Cultivation of cannabis, or activities related to preparing a cultivation site, that are non-compliant with the requirements of this Chapter 10A.17 or not consistent with the application as submitted, whether such issues are discovered during a pre-permit site inspection or other inspection of the property.
- (2) If the applicant does not meet the requirements to obtain a permit and a permit with a compliance plan is not viable, the Agricultural Commissioner's Office shall deny the permit application unless:
  - (a) the applicant immediately files for a Notice of Application Stay pursuant to County Code section 10A.17.090 and corrects the conditions of the property in a manner that would allow for permit issuance no later than the expiration of the Application Stay; or
  - (b) the applicant immediately amends the application in a manner that allows for permit issuance.
- (3) A permit may be denied based on confirmation that the applicant provided false or misleading information to the County, or any other agency if such communication was made as part of the process in securing a permit under this Chapter 10A.17.
- (4) A permit may be denied if the applicant or any agent or employee of the applicant has engaged in or is engaging in activities related to the cultivation of cannabis that endangers the health or safety of people or property.
- (5) This paragraph (D) in no way limits the authority of the Agricultural Commissioner's Office to deny an application as inherently or explicitly provided by this Chapter 10A.17.
- (E) Track & Trace unique identifiers will only be made available following the issuance of a Permit by the Agricultural Commissioner's Office. The Permittee will have seventy-two (72) hours to register with the County Track & Trace system. Upon Track & Trace system registration, the system will provide unique identifiers. The unique identifiers shall be affixed to the individual plants within seventy-two (72) hours of being provided to the Permittee.
- (F) Permits shall remain valid for one (1) year from the date of issuance, subject to any enforcement action or other action that may result in earlier suspension or revocation.

**Section 7:** Section 10A.17.160 of the Mendocino County Code is hereby amended to read as follows:

**Sec. 10A.17.160 - Enforcement and Declaration of Public Nuisance.**

- (A) All of the remedies provided for in this Chapter, or elsewhere in the law, shall be cumulative and not exclusive for violations of this Chapter. Violations of this

Chapter include, but are not limited to failure to obtain and maintain in good standing any permit required by this Chapter, compliance with any required element on which a permit was issued pursuant to this Chapter, or any violation of the provisions of this Chapter where a permit is not required, such as a violation of section 10A.17.040 when a person is otherwise exempt pursuant to section 10A.17.030. The County may enforce this Chapter by using any applicable state or county law, including, but not limited to Mendocino County Code Chapters 1.08, 8.75 or 8.76, and may use either the administrative process to achieve code compliance or available civil remedies, such as injunctive relief.

- (B) The cultivation of cannabis with a valid permit pursuant to this Chapter shall not be declared a public nuisance under County Code Chapter 8.75 or 8.76. Any cultivation of cannabis in the absence of a required County permit, or authorization, and a required State License, is a public nuisance and may be abated by the County as a public nuisance in accordance with the provisions of either County Code Chapter 8.75 or 8.76 unless such cultivation either: (1) is exempt pursuant to County Code section 10A.17.030 and in compliance with the laws to which the exemption is subject; or (2) is being cultivated by an entity whose application for a Phase One Permit pursuant to this Chapter has been submitted, accepted and is currently pending, and who has also submitted a sworn affidavit to the County Agricultural Commissioner on a form prepared by the Agricultural Commissioner that includes, but is not limited to, an affirmation that they have met the requirements to obtain a permit or are actively in the process of fulfilling the requirements, and who also possesses a State temporary or provisional license for the cultivation site applied for at the County level.

**Section 8:** Section 20.242.010 of the Mendocino County Code is hereby amended to read as follows:

**Sec. 20.242.010 - Intent.**

This chapter 20.242 ("Chapter") is intended to provide land use regulations complementary to the provisions of Mendocino County Code Chapter 10A.17. The objective of this Chapter is to allow the cultivation of cannabis in locations that are consistent with the intent of the base zoning district and to help ensure that its cultivation and related activities will not create adverse impacts to the public health, safety, and welfare of the residents of the County of Mendocino.

**Section 9:** Section 20.242.020 of the Mendocino County Code is hereby amended to read as follows:

**Sec. 20.242.020 - Application.**

This Chapter, and the complementary regulations of Chapter 10A.17 of the Mendocino County Code, shall apply only to those Persons who obtained or are in the application process for a permit pursuant to the MCCR during Phases One and Two as defined in section 10A.17.080.

**Section 10:** Section 20.242.050 of the Mendocino County Code is hereby amended to read as follows:

**Sec. 20.242.050 - New Cannabis Cultivation Sites Located in Industrial Zoning Districts.**

Establishment of a new cannabis cultivation site in the I1 (Light Industrial), I2 (General Industrial), and Pinoleville (PI) zoning districts, for the following MCCO permit types, may be permitted on or after January 1, 2018, subject to the requirements of Section 20.242.060: Type C-A, 1A and 2A, and Type C-B, 1B and 2B Permits for mixed-light cultivation, which mixed-light cultivation must occur in a greenhouse equipped with filtered ventilation systems as described in paragraph (M) of Section 10A.17.110 and may not occur in a hoop house. This section shall not be operative after the effective date of the ordinance establishing Chapter 22.18.

**Section 11:** Section 20.242.060 of the Mendocino County Code is hereby amended to read as follows:

**Sec. 20.242.060 - Intentionally Omitted.**

**Section 12:** Section 20.242.070 of the Mendocino County Code is hereby amended to read as follows:

**Sec. 20.242.070 - Planning approval required to cultivate cannabis.**

- (A) Planning Approval Procedure. Each proposed cannabis cultivation site is subject to one (1) of the following planning review processes that correspond to the applicable zoning district and Chapter 10A.17 permit as specified by Table 1 in this Chapter.

The Agricultural Commissioner's Office shall refer applications for cultivation permits pursuant to Chapter 10A.17 to the Department, which shall review the application to determine which of the following processes applies. If the application needs only a Zoning Clearance, the Department will provide a zoning clearance approval to the Agricultural Commissioner's Office. If the application requires either an Administrative Permit or a Minor Use Permit, the Department will notify the Agricultural Commissioner's Office and the applicant that planning approval is required.

- (B) Zoning Clearance. The Department shall review the MCCO permit application to confirm the cannabis cultivation site is allowed in zoning district, subject to the applicable requirements of this chapter, and confirm the legal parcel on which the cultivation site is located. The Department shall additionally provide any information as requested by the Agricultural Commissioner's Office to confirm compliance with any of the provisions of Chapter 10A.17.
- (C) Administrative Permit. In accordance with the Administrative Permit review procedure listed in Chapter 20.192, the Zoning Administrator shall approve, conditionally approve or deny an Administrative Permit for cannabis cultivation sites based on the following special findings.
- (1) The cannabis cultivation site is allowed in the zoning district and it is in compliance with the provisions of Chapter 10A.17.
  - (2) There is no other environmentally superior cultivation site located on the same parcel; the location and operation of the cannabis cultivation site

will, to the maximum extent feasible, avoid or minimize its impact on environmentally sensitive areas including hillsides exceeding fifteen (15) percent, prime soil, oak woodland, and timber resources.

- (3) The cannabis cultivation will avoid or minimize odor and light impact on residential uses.
- (4) Intentionally omitted.
- (5) The Administrative Permit granted for the cannabis cultivation site shall be limited to a period not to exceed ten (10) years. The Administrative Permit shall expire at the end of this period unless it is renewed prior to the end of the 10-year period, or at any time the approved MCCO permit for the cultivation site expires or is revoked.
- (6) An Administrative Permit may be applied for and granted for an exception to the dwelling unit requirement of Chapter 10A.17 for parcels in the Rural Residential, lot size ten (10) acres (R-R:L-10) zoning district with the additional finding that the applicant shall demonstrate that the cultivation site and any associated infrastructure (roads, buildings, water storage, etc.) does not preclude the development of the parcel with a residence in the future. For parcels that will need on-site sewage disposal systems to be developed, making this finding may require the identification of a primary and reserve leach field to be identified in order to issue the Administrative Permit.
- (7) An Administrative Permit may be applied for and granted for an exception to the one thousand (1,000) foot setback requirement of a cannabis cultivation site as outlined in section 10A.17.040(B). Administrative permits may be approved, conditionally approved or denied for the reduction of the setback provided for in section 10A.17.040(A)(1) based on the findings of 20.242.070(C)(1), (C)(2) and (C)(3) and on the following special findings:
  - (i) That there be special circumstances applicable to the property involved, including size, shape, topography, location or surrounding;
  - (ii) That the granting of such reduction will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and zone in which the property is located; and
  - (iii) That the granting of such reduction will not adversely affect the General Plan.
- (8) Applicants eligible for a Phase One Permit pursuant to Chapter 10A.17 may apply for and be granted an Administrative Permit for an exception to the setback requirement of section 10A.17.040(A)(5) of an outdoor, greenhouse, or mixed light cultivation site to an adjacent legal parcel under separate ownership or access easement. Administrative Permits

may be approved, conditionally approved, or denied for the reduction of required setbacks established in section 10A.17.040(A)(5) to no less than twenty (20) feet for cultivation not in a structure or no less than applicable front, side and rear yard setbacks for cultivation in a structure, based on the findings of section 20.242.070(C)(1), (C)(2), and (C)(3) and on the following special findings:

- (i) That the granting of such reduction will not adversely affect the character, livability, or right to appropriate development of the adjacent property from which the setback reduction is requested; and will not interfere with rights of access or usage for any legal recorded easement; and
  - (ii) That the reduced setback maintains setbacks consistent with provisions of sections 10A.17.040(A)(1), (A)(2), (A)(3), and (A)(4), as applicable, unless the applicant obtains a reduction of such setbacks through an Administrative Permit as permitted by this Chapter.
- (D) Minor Use Permit. In accordance with the Use Permit review procedure listed in Chapter 20.196, the Zoning Administrator or the Planning Commission shall approve, conditionally approve, or deny a Minor Use Permit for a cannabis cultivation site based on findings in Section 20.196.020 and the following special findings:
- (1) The proposed cannabis cultivation site is in compliance with the provisions of Chapter 10A.17.
  - (2) In cases where there is no other environmentally superior cultivation site located on the same parcel, the location and operation of the cannabis cultivation site will, to the maximum extent feasible, avoid or minimize its impact on environmentally sensitive areas including hillsides exceed fifteen (15) percent, prime soil, oak woodland, and timber resources.
  - (3) The proposed cannabis cultivation site will avoid or minimize odor and light impact on residential uses.
  - (4) Intentionally omitted.
  - (5) The Use Permit granted for the cannabis cultivation site shall be limited to a period not to exceed ten (10) years. The Use Permit shall expire at the end of this period unless it is renewed prior to the end of the 10-year period, or at any time the approved MCCO permit for the cultivation site expires or is revoked.

**Section 13. CEQA.**

This ordinance is statutorily exempt from the California Environmental Quality Act pursuant to subdivision (h) of section 26055 of the Business and Professions Code as an ordinance adopted by a local jurisdiction that requires discretionary review and approval of permits to engage in commercial cannabis activity.

**Section 14. Severability.**

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**Section 15. Termination of Moratorium.**

As of the effective date of this ordinance, the moratorium initially adopted by Ordinance No. 4488, and extended by Ordinance No. ~~\_\_\_\_\_~~, 4490, shall be terminated.

**PASSED AND ADOPTED** by the Board of Supervisors of the County of Mendocino, State of California, on this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by the following roll call vote:

AYES:  
NOES:  
ABSENT:

**WHEREUPON**, the Chair declared the Ordinance passed and adopted and **SO ORDERED**.

ATTEST: CARMEL J. ANGELO  
Clerk of the Board

\_\_\_\_\_  
DAN GJERDE, Chair  
Mendocino County Board of Supervisors

\_\_\_\_\_  
Deputy

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

*APPROVED AS TO FORM:*  
CHRISTIAN M. CURTIS  
County Counsel

BY: CARMEL J. ANGELO  
Clerk of the Board

\_\_\_\_\_  
Deputy

ATTACHMENT A

APPENDIX A

Land Use Permit Requirement for Commercial Cannabis Activity for Cultivation of Cannabis by Zoning District and Cultivation Type \*7

CCAO Cultivation Type, as described in section 8201 of the California Code of Regulations*7	Specialty Cottage Outdoor	Specialty Cottage Indoor	Specialty Cottage Mixed-Light Tier 1 and 2	Specialty Outdoor	Specialty Indoor	Specialty Mixed-Light Tier 1 and 2	Small Outdoor	Small Indoor	Small Mixed-Light Tier 1 and 2	Nursery*5	Medium Outdoor*6	Medium Indoor	Medium Mixed-Light Tier 1 and 2
Min Parcel Area (ac) *1, *2, *3	5	5	5	5	5	5	10	10	10	5	10+	10+	10+
Limitations	2,500 square-feet or less	500 square-feet or less	2,500 square-feet or less	Less than or equal to 5000 square-feet or up to 50 mature plants	501-5,000 square-feet	2,501-5,000 square-feet	5,001-10,000 square-feet	5,001-10,000 square-feet	5,001-10,000 square-feet		10,001- 1 Acre	10,001-22,000 square-feet	10,001-22,000 square-feet
	RR10	AP	AP	AP	Minor UP	Minor UP	Minor UP	Major UP	Major UP -	Minor UP	Major UP	-	-
	AG*6	AP	AP	AP	AP	AP	AP	AP	Minor UP -	Minor UP	Major UP	Major UP	Major UP -
	RL*1*6	AP	AP	AP	Major Up	Major UP	Major UP	Major UP	Major UP -	Major UP	Major UP	Major UP	Major UP -
	UR	AP	AP	AP	Minor UP	Minor UP	Minor UP	Major UP	Major UP -	Minor UP	Major UP	Major UP	Major UP -
	I1*4	-	AP	AP	-	AP	AP	-	AP	AP	AP	-	AP
	I2*4	-	AP	AP	-	AP	AP	-	AP	AP	AP	-	AP
	PI*4	-	AP	AP	-	AP	AP	-	AP	AP	AP	-	AP

- = Not Allowed, AP = Administrative Permit, Minor UP = Minor Use Permit, Major UP = Major Use Permit

\*1 Parcels in the RL zoning district must have a minimum parcel size of ten (10) acres.

\*2 A parcel that is located in a zoning district that allows commercial cultivation and has a lot area between three and one-half (3.5) and five (5) acres, and that shares at least fifty percent (50%) of its boundaries with parcels five (5) acres in size or larger, may apply for and be granted permit types Specialty Cottage Outdoor, Specialty Cottage Mixed-Light Tier 1 and 2, Specialty Outdoor, Specialty Mixed-Light Tier 1 and 2, and Nursery following the issuance of the required Land Use Permit for that zoning district.

\*3 A parcel that is located in a zoning district that allows commercial cultivation and has a lot area between seven (7) and ten (10) acres, and that shares at least fifty percent (50%) of its boundaries with parcels ten (10) acres in size or larger, may apply for and be granted permit types Small Outdoor and Small Mixed-Light Tier 1 and 2 following the issuance of the required Land Use Permit for that zoning district.

\*4 Parcels in Industrial zoning districts are not subject to a minimum parcel area.

\*5 Permit requirement applies only to stand-alone Nurseries where there is no other cultivation activities occurring on-site. Nurseries for a cultivator's own use may be permitted as accessory to the Permit for cultivation activities being processed on the same parcel.

\*6 Parcels in the AG, UR or RL zoning district that have a minimum parcel size of ten (10) acres or larger may cultivate up to 10 percent of the parcel area.

\*7 Persons who applied for a Phase 1 permit pursuant to Chapter 10A.17 that are not located in a Commercial Cannabis Prohibition (CP) Combining District or sunset area (pursuant to MCC section 10A.17.080(B)(2)(b)) may apply for a Land Use Permit under Chapter 22.18. Phase 1 applicants applying pursuant to Chapter 22.18 to cultivate 10,000 square feet or less shall be subject to issuance of a Administrative Permit and need not comply with the zoning district or parcel size criteria within Appendix A. Cultivation above 10,000 square feet is subject to the provisions of Appendix A including zoning district and parcel size.

**COUNTY OF MENDOCINO**  
**DEPARTMENT OF PLANNING AND BUILDING SERVICES**860 NORTH BUSH STREET • UKIAH • CALIFORNIA • 95482  
120 WEST FIR STREET • FT. BRAGG • CALIFORNIA • 95437MEMORANDUM

DATE: APRIL 19, 2021

TO: HONORABLE BOARD OF SUPERVISORS

FROM: JULIA KROG, ASSISTANT DIRECTOR

SUBJECT: ORDINANCE ADOPTING CHAPTER 22.18 – COMMERCIAL CANNABIS ACTIVITY  
LAND USE DEVELOPMENT ORDINANCE AND AMENDING CHAPTER 10A.17 –  
MENDOCINO CANNABIS CULTIVATION ORDINANCE AND CHAPTER 20.242 –  
CANNABIS CULTIVATION SITES (OA\_2021-0002)

INTRODUCTION/BACKGROUND

On April 4, 2017, the Board of Supervisors adopted Ordinance Number 4381, adding Chapters 10A.17 and 20.242 to the Mendocino County Code (MCC), which included a largely ministerial program for Phase Three of the cannabis program, applicable to new cultivation activities. Since adoption, the Board of Supervisors has amended and provided direction on these chapters on multiple occasions, including postponing the opening of Phase Three of the program.

On January 22, 2019, the Board of Supervisors formed a Cannabis Cultivation Ad Hoc Committee, consisting of Supervisors Haschak and McCowen, to discuss issues related to the Cannabis Cultivation Ordinance (Chapter 10A.17). On May 14, 2019, the Board of Supervisors reviewed the recommendations of the Cannabis Ad Hoc Committee and provided direction to staff to transition to Use Permits/Administrative Permits for Phase Three for all cultivation activities and align permit categories with the California Department of Food & Agriculture (CDFA). On July 14, 2020, the Cannabis Cultivation Ad Hoc Committee, consisting of Supervisors Haschak and McCowen, was terminated. On August 4, 2020, a new Cannabis Cultivation Ad Hoc was formed consisting of Supervisors Haschak and Williams.

The Board of Supervisors has given direction to staff on consideration of a discretionary permit process for new cannabis cultivation activities (Phase Three) on May 14, 2019, December 10, 2019, February 25, 2020, June 16, 2020, August 4, 2020, and October 13, 2020. Staff has prepared a draft ordinance that adopts a new Chapter 22.18 for cannabis cultivation permitting regulations, which chapter refers to the use permit processes of the zoning code. The proposed ordinance would adopt Chapter 22.18 and would make corresponding changes to Chapters 10A.17 and 20.242, including the deletion of references to Phase Three.

On January 25, 2021, the Board of Supervisors provided direction to Planning and Building Services regarding drafts of Chapter 22.18. The direction received from the meeting was incorporated into the drafts presented to the Planning Commission. Key issues or revisions made to the draft Ordinance since the review with the Board on January 25, 2021 were called out in the staff report presented to the Planning Commission. In addition, the draft Ordinance presented as part of the Planning Commission agenda packet included the necessary corresponding changes to Chapters 10A.17 and 20.242 of County Code to remove references to the original Phase Three regulations of each ordinance and also to specifically place an ending date for Phase Two.

On March 19, 2021, the Mendocino County Planning Commission reviewed the draft Ordinance and provided recommendations to the Board of Supervisors regarding aspects of proposed Chapter 22.18 and additional comments for the consideration of the Board of Supervisors. No revisions or

recommendations were made by the Planning Commission with regards to the corresponding changes to Chapters 10A.17 and 20.242 of County Code. Staff has included a discussion below of the recommendations from the Planning Commission.

On March 22, 2021, the Board of Supervisors adopted an urgency ordinance establishing a temporary moratorium on the commencement of Phase Three cannabis cultivation permitting pending the study and consideration of land use and other regulations pertaining to cannabis cultivation. As of the writing of this report it is anticipated that the Board of Supervisors will review a possible extension of the temporary moratorium at their April 12, 2021, special meeting.

#### **PLANNING COMMISSION RECOMMENDATIONS**

At the March 19, 2021 Planning Commission hearing, the Planning Commission adopted a resolution which provided several recommended changes to the proposed ordinance, as well as recommended considerations for the Board of Supervisors. Each recommended change from the Planning Commission is addressed individually below.

- (A) The Planning Commission recommends that section 22.18.030(A)(1) be revised to allow for the drilling of test water wells.
- (B) The Planning Commission recommends that the provisions in section 22.18.030 regarding cultivation exempt from a permit remain in Chapter 10A.17.
- (C) The Planning Commission recommends that the eligibility criteria in section 22.18.050(A) for Phase 1 applicants who may apply for a Land Use Permit be modified to not allow those who may have been denied a permit for one of the following reasons:
  - (1) Tree removal violation
  - (2) Failure to pass the required background check
  - (3) Lack of proof of prior cultivation
  - (4) Legal parcel established after January 1, 2016.
  - (5) Non-responsiveness to requests for information from the County.
- (D) The Planning Commission recommends that section 22.18.050(B)(1) regarding the type of Land Use Permit required for Phase 1 applicants be modified to require an Administrative Permit instead of a Major Use Permit.
- (E) The Planning Commission recommends that section 22.18.060 be revised to include a streamlined application process for applicants of Phase 1 permits to obtain an Administrative Permit under Chapter 22.18, and also include a 30-60 day window of time where Phase 1 applicants may apply for an Administrative Permit under Chapter 22.18 before the application process is opened to all applicants.
- (F) The Planning Commission recommends that section 22.18.060 be revised to include a requirement for applicants for Land Use Permits on parcels located abutting private roads to notify all property owners abutting that private road of the public hearing for the Land Use Permit.

#### **Staff Comments on this item:**

Both the Planning and Zoning Law (see, e.g., Government Code section 65093) as well as other sections of the Zoning Code (section 20.196.025(C)(6)) provide that the failure to receive certain required notices shall not constitute grounds to invalidate the actions of the local agency for which the notice was given.

Proposed section 22.18.060(A)(3), as recommended to be added by the Planning Commission, creates a separate notice obligation to owners of property abutting a private road on which a Land Use Permit is being applied for. As this is a new notice obligation, Staff would recommend adding a

sentence to this paragraph similar to those that would apply to use permits generally. Staff recommends the following addition at the end of paragraph (A)(3):

“Failure of any person or entity to receive the notice required by this paragraph shall not constitute grounds to invalidate any action taken regarding the application.”

Staff has included this additional recommended language in the drafts presented to the Board of Supervisors as part of the agenda packet.

- (G) The Planning Commission recommends modifications to Appendix A regarding the type of Land Use Permit required for the various cultivation types in the allowable zoning districts, as follows:
- (1) Specialty Cottage outdoor limitations be modified to be consistent with State law and regulations.
  - (2) For all Specialty Cottage cultivation types, the permit required by the zoning table be changed to an Administrative Permit.
  - (3) Require a Major Use Permit for all medium outdoor, medium mixed light and medium indoor cultivation types on Agricultural zoned parcels.
  - (4) Require a Major Use Permit for Nursery permits in Agricultural, Upland Residential and RR-10 zoning districts.
  - (5) For Small Outdoor and Small Indoor cultivation types in the RR-10 and Upland Residential zoning districts, a Major Use Permit is required.
  - (6) For Small Indoor and Small Mixed Light Tier 1 and Tier 2 cultivation types in the Agricultural zoning district, a Minor Use Permit is required.

All changes noted above in A through G have been incorporated into the redline drafts of the proposed ordinance that is attached to the Board of Supervisors agenda packet.

In addition to the specific changes to the ordinance recommended above, the Planning Commission made further recommendations for the consideration of the Board of Supervisors, as follows:

- (H) Consider requiring renewable energy sources for Medium Indoor and Medium Mixed Light Tier 1 and Tier 2 in order to reduce greenhouse gas emissions due to high energy usage.
- (I) Place an acreage limitation on the amount that can be cultivated pursuant to footnote \*6 in Appendix A. The Commission was not able to reach consensus on a limitation, but discussed a maximum area from 1 acre up to 5% of the parcel size, but one Commissioner recommended allowing up to the 10% of parcel size in the Rangeland zoning district.
- (J) The Planning Commission emphasized the importance of allocating appropriate resources to the Department of Planning and Building Services and the Mendocino County Sheriff's Office for permitting, enforcement and oversight.

#### **ENVIRONMENTAL DETERMINATION**

The proposed Ordinance is statutorily exempt from the California Environmental Quality Act pursuant to subdivision (h) of section 26055 of the Business and Professions Code as an ordinance adopted by a local jurisdiction that requires discretionary review and approval of permits to engage in commercial cannabis activity.

#### **TERMINATION OF MORATORIUM**

On March 22, 2021, the County adopted an urgency moratorium on the commencement of Phase Three cannabis cultivation permitting under Mendocino County Code Chapters 10A.17 and 20.242, pending the study and consideration of land use and other regulations pertaining to cannabis cultivation. On April 12, 2021, the County will consider an extension of this moratorium for an additional ten months and 15 days, in accordance with Government Code section 65858.

This moratorium was enacted for the specific purpose of not commencing Phase Three permitting while

the County was in the process of studying and preparing documents for the code changes proposed by the ordinance being considered by the Board of Supervisors as part of this agenda item. If the Board of Supervisors adopts the ordinance under consideration, the need for the moratorium would be extinguished, as Phase Three permitting would no longer exist.

As such, the ordinance contains a section terminating the moratorium as of the effective date of the ordinance. Since this memorandum and packet is being made available before April 12, 2021, the ordinance contains a blank for the ordinance number of any renewal of the urgency moratorium. This section of the ordinance will be updated based on the outcome of the April 12, 2021, moratorium renewal agenda item.

This staff memorandum and supporting documentation are also intended to be the written report required pursuant to Government Code section 65858 describing the measures taken to alleviate the condition which led to the adoption of the moratorium ordinance. The ordinance adding Chapter 22.18 and eliminating Phase Three permitting from Chapters 10A.17 and 20.242 would eliminate the possibility of conflicting existing and proposed regulations and the confusion, increased workload, and resulting negative impact on permit processing that would ensue.

**RECOMMENDED MOTION FOR THE BOARD OF SUPERVISORS**

See agenda summary for this item for a recommended motion.

**ATTACHMENTS**

- A. Planning Commission Hearing Packet
- B. Planning Commission Signed Resolution
- C. Draft Ordinance (Redline of all Chapters)
- D. Draft Appendix A (Redline)
- E. Draft Ordinance and Appendix A (Clean)



ATTACHMENT A

IGNACIO "NASH" GONZALEZ, AICP INTERIM DIRECTOR  
JULIA ACKER KROG, ASSISTANT DIRECTOR

**COUNTY OF MENDOCINO**  
**DEPARTMENT OF PLANNING AND BUILDING SERVICES**

860 NORTH BUSH STREET • UKIAH • CALIFORNIA • 95482  
120 WEST FIR STREET • FT. BRAGG • CALIFORNIA • 95437

TELEPHONE: 707-234-6650  
FAX: 707-463-5709  
FB PHONE: 707-964-5379  
FB FAX: 707-961-2427  
pbs@mendocinocounty.org  
www.mendocinocounty.org/pbs

MEMORANDUM

DATE: APRIL 27, 2021

TO: HONORABLE BOARD OF SUPERVISORS

FROM: JULIA KROG, ASSISTANT DIRECTOR  
KRISTIN NEVEDAL, CANNABIS PROGRAM MANAGER  
MATTHEW KIEDROWSKI, DEPUTY COUNTY COUNSEL

SUBJECT: ORDINANCE ADOPTING CHAPTER 22.18 – COMMERCIAL CANNABIS ACTIVITY  
LAND USE DEVELOPMENT ORDINANCE AND AMENDING CHAPTER 10A.17 –  
MENDOCINO CANNABIS CULTIVATION ORDINANCE AND CHAPTER 20.242 –  
CANNABIS CULTIVATION SITES (OA\_2021-0002)

OPTIONS FOR CONSIDERATION AS DIRECTED ON APRIL 19, 2021

On April 19, 2021 the Mendocino County Board of Supervisors (Board) held a noticed public hearing on OA\_2021-0002, an ordinance adopting Chapter 22.18 – Commercial Cannabis Activity Land Use Development Ordinance and amending Chapters 10A.17 – Mendocino Cannabis Cultivation Ordinance and 20.242 – Cannabis Cultivation Sites (Ordinance). The agenda item was continued to the April 27, 2021 agenda with direction to staff to prepare options for Board consideration regarding several topics related to the draft Ordinance.

The discussion on April 19, 2021 generally followed the memorandum prepared by Supervisor McGourty dated April 18, 2021 (Memorandum), therefore staff has attached the Memorandum here for ease of use as Attachment A. For the benefit of the Board, staff has included the definitions of the various Cultivation Permit Types under State law and current limitations on Cultivation for Phase 1 below.

**Definition of Cultivation Permit Types** (per Title 3, Division 8, Chapter 1 (commencing with section 8000) of the California Code of Regulations):

**Outdoor cultivation means** the cultivation of mature cannabis without the use of artificial lighting or light deprivation in the canopy area at any point in time. Artificial lighting is permissible only to maintain immature plants outside the canopy area.

**Mixed-Light Tier 1 cultivation means** the cultivation of mature cannabis in a greenhouse, hoop-house, glasshouse, conservatory, hothouse, or other similar structure using a combination of:  
(1) Natural light and light deprivation without the use of artificial light or with the use of artificial light at a rate above zero, but no more than six watts per square foot; or  
(2) Natural light and artificial lighting at a rate above zero, but no more than six watts per square foot;

**Mixed-Light Tier 2 cultivation means** the cultivation of mature cannabis in a greenhouse, hoop-house, glasshouse, conservatory, hothouse, or other similar structure using a combination of:  
(1) Natural light and light deprivation and the use of artificial light at a rate above six and below or equal to twenty-five watts per square foot; or  
(2) Natural light and artificial lighting at a rate above six and below or equal to twenty-five watts per square foot.

***Indoor cultivation means the cultivation of cannabis within a permanent structure using exclusively artificial light or within any type of structure using artificial light at a rate above twenty-five watts per square foot.***

**Current Cultivation Permit Sizes (Chapter 10A.17) [Note: Staff has modified the descriptions of the current Cultivation Permit sizes to align with the State Definitions.]**

Maximum cultivation permit size, per parcel, is as follows:

- Small Outdoor, allows for 5,001 – 10,000 square feet of mature plant canopy. (Currently does not allow for hoop houses or greenhouses.
- Small Mixed-Light Tier 1, allows for 5,001 – 10,000 square feet of mature plant canopy.
- Small Mixed-Light Tier 2, allows for 5,001 – 10,000 square feet of mature plant canopy.
- Small Indoor, allows for 5,001 – 10,000 square feet of mature plant canopy.
- Each cultivation permit is allowed to also have a nursery license not to exceed 12,000 square feet of immature plant canopy.

**Note:** The combination of one Small Mixed-Light cultivation permit and one nursery permit at 12,000 square feet has resulted in 22,000 square feet of hoop house and/or greenhouse structure development for some applicants operating under Chapter 10A.17.

**#6 ON MEMORANDUM:**  
**OPTIONS REGARDING LIMITATIONS ON HOOP HOUSE AND GREENHOUSE STRUCTURES**

Option 1:

Allow the Cultivation types that presently exist within the Ordinance and leave discretion for limitations on hoop house or greenhouse structures to the discretion of the Planning Commission. [Note: This is how the Ordinance is presently drafted.]

Maximum permit size is as follows:

- Medium Outdoor, allows for 10,001 – 43,560 square feet of mature plant canopy.
- Medium Mixed-Light Tier 1, allows for 10,001 – 22,000 square feet of mature plant canopy.
- Medium Mixed-Light Tier 2, allows for 10,001 – 22,000 square feet of mature plant canopy.
- Medium Indoor, allows for 10,001 – 22,000 square feet of mature plant canopy.

Note: the above list does not include potential increased cultivation areas allowed by proposed \*6 of Appendix A.

Considerations for Supplemental Findings:

In consideration of Option 1, the Board could add required supplemental findings to the Ordinance to ensure that these types of Cultivation are in line with the vision of the Board. Staff includes potential supplemental findings below.

Option 2:

Limit the Mixed-Light and Indoor cultivation permit types within the Ordinance, by removing the allowances for Medium Mixed-Light cultivation permits and Medium Indoor cultivation permits. This would result in the permitting of no more than 10,000 square feet of Mixed-Light or Indoor cultivation.

Option 3:

Limit the Mixed-Light and Indoor cultivation permit types within the Ordinance to Specialty Cottage or Specialty size permits.

- Specialty Cottage Mixed-Light, allows for up to 2,500 square feet of mature plant canopy.
- Specialty Cottage Indoor, allows up to 500 square feet of mature plant canopy.

- Specialty Mixed-Light permit sizes, allow for 2,501 – 5,000 square feet of mature plant canopy.
- Specialty Indoor permit sizes, allow for 501 – 5,000 square feet of mature plant canopy.

Option 4:

Limit the zoning districts in which Mixed-Light cultivation permit types and Indoor cultivation permit types are allowed.

Example Zoning Restrictions Include

- Limiting Mixed-Light and Indoor cultivation permit types to Industrial zoned properties; or
- Prohibiting Mixed-Light and Indoor cultivation permit types in Rangeland.

Option 5:

Remove all Mixed-Light and Indoor cultivation permit types from the Ordinance. Consider altering the definition of the Outdoor cultivation permit type to prohibit hoop house and greenhouse structures. Additionally, consider restricting the size of hoop house and greenhouse structures allowed for the propagation of immature plants to 1,000 square feet as referenced in the Memorandum.

Potential limitation language for Outdoor: *Outdoor cultivation shall exclude the use of structures, including greenhouses, hoop houses, glasshouses, conservatories, hot houses and any similar structure.*

Additional Staff Comments on Options:

If one of Options 3, 4 or 5 is selected, the Board may want to consider how to handle Phase 1 applicants who already have existing Mixed-Light or Indoor Cultivation activities on their site who may desire to apply for a Land Use Permit under the proposed Ordinance.

Potential Supplemental Findings applicable to Mixed-Light and Indoor Cultivation:

1. The proposed cannabis cultivation site will not result in grading, cutting and/or filling that would significantly and permanently alter or destroy the appearance of natural landforms.
2. The proposed cannabis cultivation site will not project above an existing ridgeline; however, if no alternative site is available below the ridgeline, a finding shall be made that the cannabis cultivation site will be sited and designed to reduce visual impacts.

**#7 ON MEMORANDUM:****EXPANSION INTO RANGELAND (ALL CULTIVATION ON RANGELAND)**

The Board expressed a desire to limit cultivation in the Rangeland (RL) zoning district under the proposed Ordinance to the following:

“rangeland that has been previously cleared and tilled with a previous crop history.”

The Board discussed that the eligibility of rangeland using the above exception language must be visible in aerial photographs in 2015 or earlier. Staff has several recommendations and comments for the Board regarding the above exception:

1. Consider limiting allowable Cultivation types and sizes on RL zoned properties as opposed to the exception language contained above, as verification may prove difficult like it has for proof of prior cultivation in Chapter 10A.17.
2. Consider aligning the date of verification to the proof of prior cultivation date of January 1, 2016, and/or provide a date range during which verification must be demonstrated.
3. Consider adding definitions or clarifications of “tilled” and “previous crop history”.

4. Consider authorizing the high-resolution satellite imagery that may be obtained for enforcement activities for use by Cannabis Program staff in verifying eligibility of RL zoned properties that apply for a Land Use Permit under the proposed Ordinance.

The Board also recommended that a supplemental finding be added related to cannabis cultivation sites proposed on RL zoned properties. Staff has also prepared the following draft supplemental findings for consideration of the Board (numbers 2 through 5); however, these are based off of policies contained within the General Plan related to development of RL properties and would be addressed through the existing Use Permit findings in section 20.196.020:

1. The proposed cannabis cultivation site is located on a site that has been previously cleared and tilled and has a previous crop history in compliance with the provisions of this Chapter.
2. The proposed cannabis cultivation site will retain movement corridor(s) adequate (both in size and in habitat quality) to allow for continued wildlife use based on the species anticipated to use the corridor and maintain compatibility with adjacent uses. [Note: this finding was adapted from General Plan Policy RM-30.]
3. The proposed cannabis cultivation site will not result in a need for unintended expansion of infrastructure in conflict with other policies. [Note: this finding was adapted from General Plan Policy RM-106.]
4. The proposed cannabis cultivation site will not adversely affect the long-term integrity of the agricultural areas or agricultural uses in the area. [Note: this finding was adapted from General Plan Policy RM-106.]
5. The proposed cannabis cultivation site will not undermine the integrity and economic viability of agricultural operations by causing or contributing to piecemeal land use conversion, land fragmentation, urban encroachment, the introduction or concentration of incompatible uses on lands adjoining or within agricultural areas, or the extension of growth-inducing urban services such as public water or sewers. [Note: this finding was adapted from General Plan Policy RM-108.]

### **COMMENTS ON DIRECTIVES**

Consensus was reached on several items by the Board on April 19, 2021. Staff has several comments for consideration of the Board on a few of the consensus items:

1. The Board directed that staff use the Chapter 10A.17 slope restrictions for the proposed Ordinance. Staff has reviewed both the Chapter 10A.17 regulations and the proposed Ordinance related to slope restrictions and does not see a difference between the two regulations, as both appear to limit development on hillsides exceeding fifteen (15) percent. Existing slope regulations are found in section 20.242.070(C)(2) and the proposed Ordinance restrictions are found in the proposed required finding contained in section 22.18.070(B).
2. The Board directed that staff allow for cultivation on up to ten (10) percent of the parcel area for sites zoned Agricultural (AG) and Rangeland (RL) with the caveat that in the RL district it shall only be allowed where existing disturbed soil is present. Staff wishes to affirm two points on this with the Board:
  - a. Confirm that Upland Residential (UR) is not included in this directive, and
  - b. Confirm whether the same exception language provided for all cultivation in RL (noted above) applies to this directive.
3. The Board directed that all new wells related to cannabis cultivation activities require a hydrological study. Staff recommends that the Board consult with the Division of Environmental Health staff regarding implementation of this directive, as presently the County does not have a hydrologist on staff nor adopted procedures for hydrological studies outside of the Coastal Zone.

4. The Board directed that no water hauling be authorized as the primary water source, but may be utilized on an emergency basis. Staff recommends the Board consider a supplemental finding related to water hauling if required or this language could be added to the existing recommended findings in section 22.18.070(D), as follows:

*The proposed cannabis cultivation site is primarily served by a legal water source located on-site that does not rely upon water delivery, except delivery of water may be utilized in emergency circumstances.*

5. The Board directed that generators and internal combustion engine water pumps shall not be the primary source of power for cultivation activities. Staff recommends the Board consider a supplemental finding related to generators/internal combustion engines, as follows:

*The proposed cannabis cultivation site does not rely upon generators as their primary power source and/or internal combustion engine water pumps, except use of such items may be authorized in emergency circumstances or as a back-up power source or water pump.*

6. The Board had discussed concerns related to application work flow within the Department. Staff recommends inclusion of additional language to section 22.18.060 to address this, as follows:

*The Department may establish periods of time during which it will and will not accept applications for Land Use Permits pursuant to this Chapter as it deems appropriate to manage workload.*

#### **ATTACHMENTS**

- A. Memorandum by Supervisor McGourty dated April 18, 2021.



# COUNTY OF MENDOCINO

501 Low Gap Road  
Ukiah, CA 95482-3734

Website: [www.mendocinocounty.org](http://www.mendocinocounty.org)

Office: (707)463-4441  
Fax: (707)463-4673

April 18, 2021

**Memo to:** Chairman Dan Gjerde

**From:** Glenn McGourty

**RE: Cannabis Ordinance**

I believe the following guidelines will help us in deliberations concerning crafting the cannabis ordinance and its implementation:

1. Our first step is an enhanced active code enforcement similar to Humboldt County's to stop illegal grows. There are too many of them, particularly in rural residential areas and they need to be abated. We need to be sure that both our Code Enforcement Program and the Sheriff's Office are adequately staffed and funded to make a measurable difference in this coming year.
2. Given drought conditions, there should be no expansion of actual growing during the 2021 season. According to Dr. Sam Sandoval, UC Extension Hydrologist, the biggest negative impacts on surface water and fisheries occur when water is diverted in the upper reaches of a watershed. We definitely do not want expanding growing in those regions this year.
3. This is a good time to "get our house in order" with the Phase 1 program. A thorough review of applications should be made to find a pathway to compliance that will enable applicants to obtain a use permit and a state issued cannabis license. We need to complete the electronic application submission portal. I support additional staffing to review the applications and make final decisions. Applications that have no path forward due to inadequacies of the site to meet regulations or other disqualifying issues should be rejected.
4. Phase 3 should be opened as a pathway for some of the Phase 1 applicants to complete mitigated CEQA compliant permits. Under a CEQA compliant process, they may have the ability to mitigate issues that would otherwise disqualify their projects.
5. Additionally, I recommend a pilot program of new applicants on parcels more suited to conventional agriculture. I see a selected cohort of 30 existing resident Mendocino

## ATTACHMENT A

County farmers who are presently locally in business producing crops other than cannabis who wish to enter the cannabis business. Required classes should be held to ensure that their applications are properly assembled and complete upon submission. We need to be sure that the Cannabis Program has adequate staffing to review new applicants. An orderly roll out of the new expanded program is the goal of this effort.

6. In this expansion, the permits will be for sun grown cannabis only. No greenhouses, hoop houses or other growing structures would be permitted. A small (maximum 1000 square foot) structure would be allowed to propagate or harden off seedlings and starts.

7. No expansion of cannabis into Rangeland, TPZ or other areas unless there already exists non cannabis crop land that has been cleared and has a legal reliable water source.

8. No operations should be considered for permitting that require internal combustion generators or pumps, water to be trucked in (except in emergency situations,) extensive grading or tree removal.

9. No fencing that block views are allowed in any newly permitted plantings. We want to maintain our pastoral vistas and an open feel of the region.

10. In order to allow direct sales for very small producers, a microbusiness option should be implemented similar to regulations allowed under state licenses. The one presently allowed in our ordinance is too small in square footage to be practical.

If we are going to have a cannabis business in Mendocino County, let's have a well-run one that makes a contribution to economy, community and farm based rural culture. There has to be a value proposition that makes its presence a net positive for Mendocino County. I won't support anything less.